



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0181]

RIN 1625-AA09

**Drawbridge Operation Regulation; Duluth Ship Canal,
Duluth-Superior Harbor, MN**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Duluth Aerial Lift Bridge for vessels under 300 gross tons. The City of Duluth has requested that the current summer bridge schedule (Memorial Day to Labor Day) be extended to include the spring and fall.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0181 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION**

section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Duluth Aerial Bridge is located 0.25 miles from Duluth Harbor North Pier Light at the lakeward end of the Duluth Ship Canal. It is a vertical lift type bridge that provides 15 feet of vertical clearance in the down position and up to 141 feet in the open position. Currently the bridge opens on signal except that, from the Friday before Memorial Day through the Tuesday after Labor Day each year, between the hours of 7 a.m. and 9 p.m., seven days a week, the drawbridge opens on the hour and half-hour for vessels under 300

gross tons, if needed; and the bridge will open on signal for all vessels from 9 p.m. to 7 a.m., seven days a week, and at all times for Federal, state, and local government vessels, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, commercial-assist towing vessels engaged in towing or port operations, vessels engaged in pilot duties, vessels seeking shelter from severe weather, and all commercial vessels 300 gross tons or greater. From January 1 through March 15, the draw opens on signal if at least 12 hours notice is given. The opening signal is one prolonged blast, one short blast, one prolonged blast, one short blast. If the drawbridge is disabled, the bridge authorities shall give incoming and outgoing vessels timely and dependable notice, by tug service if necessary, so that the vessels do not attempt to enter the canal.

Marine traffic on the waterway consists of large commercial vessels, smaller commercial vessels, and both power and sail recreational vessels. Duluth-Superior Harbor has two federal project channels available for mariners to enter the harbor: The Duluth Ship Canal and the Superior Channel. The Superior Channel is not crossed by any bridges.

III. Discussion of Proposed Rule

The City of Duluth operates the Duluth Aerial Lift Bridge across the Duluth Ship Canal and has reported increased traffic and community growth on Minnesota Point, which is only accessible by the Aerial Bridge, and has requested that the current scheduled summer openings be extended to include the spring and fall. The City of Duluth believes this will improve the flow of vehicular traffic over the bridge, relieve vehicular congestion near the bridge and on city streets on both sides of the bridge (Park Point and Canal Park), improve access and response times for emergency response entities, and enhance pedestrian safety in the vicinity of the bridge. The City of Duluth has informally queried local stake holders and has received several comments in favor of extending the summer bridge operating schedule to cover the spring and fall dates (March 16 to December 31).

The regulation only affects recreational vessels and commercial vessels under 300 gross tons. The drawbridge will continue to open at all times for commercial vessels over 300 gross tons. The only change to the regulation will be to extend the dates of the scheduled bridge openings from the Friday before Memorial Day through the Tuesday after Labor Day to

March 16 through December 31 each year.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the expected improvement to traffic and all modes of traffic using the drawbridge, and the proven improvement realized by the previous change to the bridge schedule implemented in the last rulemaking.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridges may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator because we coordinated with the marina operators and the local stakeholders and incorporated their concerns into the proposed regulation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to

what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under

that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in

such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact

the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to revise 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1;
Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.661 to read as follows:

§ 117.661 Duluth Ship Canal (Duluth-Superior Harbor).

The draw of the Duluth Ship Canal Aerial bridge, mile 0.25 at Duluth, shall operate as follows:

- (a) From 16 March through 31 December, between the hours of 7 a.m. and 9 p.m., seven days a week, the drawbridge shall open on the hour and half-

hour for vessels under 300 gross tons, if needed; and the bridge will open on signal for all vessels from 9 p.m. to 7 a.m., seven days a week, and at all times for Federal, state, and local government vessels, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, commercial-assist towing vessels engaged in towing or port operations, vessels engaged in pilot duties, vessels seeking shelter from severe weather, and all commercial vessels 300 gross tons or greater.

- (b) From January 1 through March 15, the draw shall open on signal if at least 12 hours notice is given. The opening signal is one prolonged blast, one short blast, one prolonged blast, one short blast. If the drawbridge is disabled, the bridge authorities shall give incoming and outgoing vessels timely and dependable notice, by tug service if necessary, so that the vessels do not attempt to enter the canal.

Dated: July 27, 2018.

J. M. Nunan,
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.
[FR Doc. 2018-16669 Filed: 8/2/2018 8:45 am; Publication Date: 8/3/2018]